IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.7185 OF 2000.

Superintending Engineer, Krishna Koyana Lift Irrigation
Project Circle, Warnali Vasant Vishrambaug, Sangli & Ors... ... Petitioners.

V/s

Nandkumar Sahebrao Borude & Anr.... ... Respondents.

Mr.Vijay Patil, Adv. For the petitioners.

Mr.C.M. Savagave for respondent No.1.

CORAM: V.G. PALSHIKAR
AND
D.B. BHOSALE, JJ.
19.8.2005

PC:

By this petition the petitioner has impugned the order passed by the Maharashtra Administrative Tribunal directing the petitioner to appoint respondent No.1 as junior engineer.

2. The father of the petitioner was in Government service in Education department and he expired on 11.5.1993. On 31.5.1993 respondent No.1 applied to the Superintending Engineer, Bhima Project Circle, Solapur for appointment in Irrigation department on compassionate ground. On 30.8.1993 petitioner was appointed on compassionate ground in the post of Tracer Class-III by Superintending Engineer. Since then till 1997 the petitioner was serving in class III post under the Superintending

Engineer, Bhima Project Circle, Solapur.

3. On 20.12.1996 the Government of Maharashtra added certain categories of posts on which appointment on compassionate ground could be made. Therefore on 8.4.1997 respondent No.1 applied for being appointed to the post of Junior Engineer given on compassionate ground. This prayer was rejected therefore Original Application was filed before the Maharashtra Administrative Tribunal. The Tribunal relying on its earlier judgment directed that respondent No.1 be given compassionate appointment to the post of Junior Engineer. This order is impugned in this petition.

4. Grant of appointment on compassionate ground is a statutory exception from the constitutional rule in Article 16 of the Constitution of granting equality of opportunity in the matter of public employment. This mandate of the Constitution is allowed to be ignored and compassionate appointment without following any procedure is made permissible solely with a view to help the family in overcoming the distress because of the death of bread earner. That being the sole purpose of exception it is to be used as an exception and not as a rule. Using this exception respondent No.1 has secured a job in class III. He worked there for four years and more. The problem of overcoming the difficult part by his family is thus over.

5. It is settled position in law as held by the Supreme Court in the case of ***State of Rajasthan*** v. ***Umrao Singh.***,1994 (6) SCC 560 that appointment on compassionate ground is not permissible and possible for betterment of services acquired on compassionate ground. To same effect is the judgment reported in the case of ***Umesh Kumar Nagpal*** v. ***State of Haryana & Ors.***, (1994) 27 Adm. Tribunals Cases 537. In the circumstances the Tribunal erred in law in issuing impugned direction. In the result

therefore the petition succeeds and is allowed. The impugned order passed by the Maharashtra Administrative Tribunal is set aside. However there shall be no order as to costs.